Filed 9/30/03 In re S.B. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re S. B. et al, Persons Coming under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. JASON B., Defendant and Appellant.	E033535 (Super.Ct.No. RIJ103830) O P I N I O N

APPEAL from the Superior Court of Riverside County. Martin Swanson, Temporary Judge. (Pursuant to Cal. Const., art. VI., § 21.) Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant.

William C. Katzenstein, County Counsel, and Julie A. Koons, Deputy County Counsel, for Plaintiff and Respondent.

Sharon S. Rollo, under appointment by the Court of Appeal, for Minor.

Jason B. (father) is the natural father of S., a dependent child of the juvenile court. Father appeals an order denying him reunification services with the child. We affirm the order.

FACTS AND PROCEDURAL HISTORY

Father and Sophia S. (mother) had three children, Brooke, Marie and S. In June of 2001, Marie, the second child, had been born prematurely. Mother tested positive for methamphetamine, and Marie showed withdrawal symptoms. An investigation conducted at that time showed that father and mother had a history of domestic violence and drug abuse. They had been arrested, and sometimes convicted, for numerous crimes (e.g., theft, forgery, robbery, burglary, battery, and violations of parole).

When father met with the social worker, he claimed he had been drug-free for just over one year. He stated that he had recently received his one-year sobriety "chip" from his recovery program, but was unable to produce it. He told one social worker that he had given the chip to a friend, and told another that he had given it to his father; father's father "c[ould] not recall being given any chips," however.

Father admitted that his relationship with mother had "had ups and downs," and admitted some incidents of domestic violence, "prior to having children." Father also conceded he had had trouble with chemical dependency, and that he had "been in and out of jail" in the past. He stated that he was "not surprised" that mother had tested positive for drugs. However, when father was told that mother had said that she and father had used drugs together, he simply asserted that mother was "vindictive," because "[s]he is

Mexican[;] that says it all." He further speculated that mother resented him because he does not work.

The social worker informed father that he would need to participate in drug testing, drug treatment and parenting classes. Father was "resistant to these services," however, stating that he felt "that they are not necessary."

The children, Brooke and Marie, were removed from parental custody.

In July of 2001, father visited regularly with the older child, Brooke. Father was difficult to work with, however, and seemed to test the limits of the visitation rules; his behavior was somewhat manipulative and resentful, though he would nominally comply with the social worker's requests when confronted directly. The visitation monitor also observed father to treat mother in a domineering and condescending fashion during visitations.

In August of 2001, the baby, Marie, had made sufficient gains to be placed with her sister in foster care. Father continued to visit; the foster mother reported that father's visits were appropriate. Father still resisted drug testing, however, and had not yet entered a drug treatment program or begun parenting classes.

On August 16, 2001, the juvenile court made jurisdictional findings and declared Brooke and Marie to be dependent children of the juvenile court. The matter was set for a contested dispositional hearing.

As of September, 2001, father had continued to visit appropriately with the children, and the foster mother reported that he had been polite. Father also showed the

social worker a letter, purportedly from his 12-step recovery program sponsor, attesting his attendance at the program, and completion of several of the steps of the program. The social worker's further inquiries established, however, that father falsified the letter and forged the purported sponsor's signature on the letter.

The social worker performed a home evaluation of the maternal aunt, and provisionally approved placing the children with the aunt. On September 21, 2001, the court entered dispositional orders, removing the children from parental custody and ordering reunification services. The children were placed, in accordance with the recommendation, with the maternal aunt.

Approximately four months later, in February of 2002, father had moved to Riverside County, had begun working, and was still visiting the children regularly. He had not progressed in any other aspects of his service plan, however. The social worker filed an addendum report in March of 2002, indicating that father had finally enrolled in a county-sponsored outpatient drug treatment program.

The court held a six-month review hearing[1] on March 13, 2002. The court continued the children as dependents of the court and ordered reunification services to continue for an additional six months.

Shortly thereafter, mother gave birth to the third child, S. The child exhibited features indicative of Fetal Alcohol Syndrome or in utero exposure to drugs.

By July of 2002, mother had moved into the maternal aunt's home, where the children had been placed. Mother had made progress on her case plan, and the family was doing well. Father, on the other hand, had lost his job and his residence, and had not completed any aspect of his reunification plan. He went to the aunt's home and was arrested there for causing a disturbance. Father's visitation was then restricted to supervised visitation at the Department of Public Social Services (DPSS) offices.

Then, in August of 2002, father was arrested for possession of drugs.

A 12-month review hearing was scheduled for September of 2002. At that hearing, the court ordered the children returned to mother's care, so long as she remained living in the aunt's home and continued with supportive services. The court terminated father's reunification services.

In November of 2002, father was convicted on the drug possession charges and sentenced to state prison. The children's placement with mother also failed: mother had moved from the aunt's home, contrary to the court's orders, had left the children with inappropriate caretakers, and relapsed into drug use. In January of 2003, therefore, DPSS detained the children and filed a supplemental petition under Welfare and Institutions Code section 387, as to Brooke and Marie, and an original dependency petition, under Welfare and Institutions Code section 300, as to the new baby, S.

[footnote continued from previous page]

1 Welfare and Institutions Code section 366.21, subdivision (e).

The children were detained in foster care.

The hearing on the petitions was held on April 14, 2003. The court found the section 387 petition, as to Brooke and Marie, to be true, and removed them from parental care. The court ordered reunification services for mother, but not for father. On the section 300 petition, as to S., the court denied father's request for a continuance. Father presented evidence that, while in prison, he had "made attempts" to qualify for reunification with his children, and showed that he had letters from employers offering to hire him upon his anticipated release from prison in July of 2003. The court nonetheless removed S. from the custody of her parents, found the allegations of the petition to be true, and adjudged S. to be a dependent child of the juvenile court. The court ordered the child placed with DPSS.

The court ordered reunification services for mother, but denied services to father under Welfare and Institutions Code section 361.5, subdivision (b)(10).

Following the hearing, on April 15, 2003, father filed a notice of appeal, seeking review of the order denying him reunification services.

ANALYSIS

I. Standard of Review

Different courts have stated or assumed different standards of review when considering the issue of denying reunification services under Welfare and Institutions Code section 361.5. Some have "examine[d] the court's determination denying

reunification services for substantial evidence."[2] Others have used language indicating that an abuse of discretion standard was employed.[3]

We conclude that, under either standard, the court's order here, denying father reunification services, was proper.

II. The Court Properly Denied Reunification Services to Father

Father argues that he had taken "some steps," while in prison, to treat his drug "problem," and that "the best interests of [S.] indicated the provision of reunification services." Thus, father argues, the court erred in denying him such services.

Father places great reliance on *Renee J. v. Superior Court*[4] for the pronouncement that, "[s]ection 361.5 authorizes, but *does not require*, the court to deny services in specified circumstances," as well as its indication that, "[i]f the evidence suggests that despite a parent's substantial history of misconduct with prior children, there is a reasonable basis to conclude that the relationship with the current child could be saved, the courts should always attempt to do so."

Welfare and Institutions Code section 361.5, subdivision (b)(10) permits the court to deny reunification services to a parent where "the court ordered termination of reunification services for any siblings or half-siblings of the child because the parent or guardian failed to reunify with the sibling or half-sibling after the sibling or half-sibling

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[2] *In re James C.* (2002) 104 Cal.App.4th 470, 484.
[3] See, e.g., *In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1137.

had been removed from that parent or guardian . . . and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from that parent or guardian."

Father contends that the court could not have found he had "not subsequently made a reasonable effort" to overcome the problems that led to the earlier dependency, because he "had made some effort" to "fix his problems." That is, he had, while incarcerated, signed up for a parenting class and registered for a substance abuse program.

Although father may have made some, admittedly "small," efforts to address his difficulties, the evidence in no way indicated that he had made "a reasonable effort" to overcome the problems which had led to the dependencies.

For example, although counsel claimed that father "did sign up" for "in-patient drug treatment programs," counsel further described that documentation as a "letter from the Department of Mental Health indicating that [father] was assessed on August 8, 2002 for Riverside County substance abuse program," and a later letter "dated October 30, 2002, . . . indicating that [father] and his family are clients of the Department of Public

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4 *Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1464.

Social Services and that, in fact, [father] has enrolled in the Riverside County substance abuse program."

Father's evaluation for the substance abuse program, however, obviously predated his drug arrest, and his later conviction for that offense. Indeed, as one of the letters indicated, father had been evaluated for admission to the Riverside County program, but "[u]nfortunately, he was jailed before he went to the intake appointment, which was scheduled for 08/14/02." The record shows, at best, that father made an abortive attempt to enroll in a drug rehabilitation program. It does not show that he actually initiated, attended, completed, or benefited from any drug cessation program, whether in or out of prison.

The only other evidence in the record at all is a document showing that father had been accepted for an in-prison parenting program, scheduled to begin in January of 2003. As of the hearing two and one-half months later, in April of 2003, father presented no evidence whatsoever that he had actually attended any of the sessions. By any stretch of the imagination, such minimal evidence does not amount to a "reasonable effort to treat the problems that led to" the earlier dependency. Whether viewed under a substantial evidence standard, or an abuse of discretion standard, the court did not err in denying reunification services to father.

DISPOSITION

The juvenile court's order, denying reunification services to father, is affirmed.

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/s/ Ward
Acting P.J.

We concur:

/s/ Gaut
J.

/s/ King
J.